

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations.)
(Portage and Stoughton, Wisconsin))
)

MM Docket No. 04-239
RM-10998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Commission's Secretary, Office of the Secretary
Attn: Assistant Chief, Audio Division
Media Bureau

REPLY COMMENTS AND OPPOSITION TO REQUEST FOR WAIVER

Mid-West Management, Inc. ("Mid-West"),¹ by its counsel, hereby submits its Reply Comments and Opposition to Request for Waiver in response to the Comments in Support of Notice of Proposed Rulemaking and Request for Waiver filed by Magnum Communications, Inc. ("Magnum") in the above referenced proceeding.² In the NPRM, and at the request of Magnum, the Commission has proposed to reallocate Channel 240A from Portage, Wisconsin to Stoughton, Wisconsin. By its own admission, Magnum's comments were not timely filed. Based on this

¹ Mid-West is the licensee of the following radio stations: WTUX(AM), WMGN(FM) and WLMV(AM), Madison, Wisconsin, WJJO(FM), Watertown, Wisconsin, WWQM-FM, Middleton, Wisconsin, WTDY(AM), Madison, Wisconsin, an expanded band facility paired with WLMV(AM), WHIT-FM, DeForest, Wisconsin and permittee of 971030ML, Mount Horeb, Wisconsin.

² *In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Portage and Stoughton, Wisconsin)*, Notice of Proposed Rule Making, MB Docket No. 04-239, RM-10998 (rel. June 28, 2004).

procedural defect, as well as the substantive defects underlying Magnum's reallocation proposal, the Bureau should immediately dismiss or deny Magnum's comments and waiver request.

Comments in this proceeding were due on August 19, 2004.³ According to Magnum, it did not receive a copy of the NPRM and was unaware of the need to file comments until it received Mid-West's comments opposing the Magnum proposal.⁴ However, as Magnum is undoubtedly aware, the Commission has repeatedly stated that it will not accept late-filed comments in a contested allocation proceeding.⁵ According to the Commission, "[a]cceptance of late filed comments supporting an allocation proposal is limited to situations where *there is no opposition to the proposal* and where there would be no adverse impact on another pending proposal." *Moscow, Ohio* at ¶ 5 (emphasis added). In this case, Mid-West opposed the proposed reallocation of Channel 240A as deficient in several significant respects and as contrary to the public interest.⁶ As a result, the Bureau should deny Magnum's untimely waiver request and dismiss the reallocation proposal as unacceptable, consistent with established Commission precedent.

Even if Magnum had filed timely comments, the Bureau would still be compelled to reject the proposed reallocation of Channel 240A from Portage to Stoughton because, as Mid-West demonstrated in its comments, the proposal would create a significant underserved area and

³ See NPRM, at 1.

⁴ See Magnum Comments at 1.

⁵ See *Memorandum Opinion and Order (Moscow, Ohio et al.)*, 5 FCC Rcd 926 (1990) ("*Moscow, Ohio*"); See also *Marine Broadcasting Corporation*, 7 FCC Rcd 544 (1992); *Report and Order (Flora and Kings, Mississippi and Newellton, Louisiana)*, 7 FCC Rcd 5477 (1992); *Memorandum Opinion and Order (Santa Isabel, Puerto Rico)*, 3 FCC Rcd 2336 (1988) (same), *aff'd*, 4 FCC Rcd 3412 (1989), *aff'd sub nom. Amor Family Broadcasting Group v. FCC*, 918 F.2d 960 (DC Cir. 1990).

⁶ See Comments in Opposition to Notice of Proposed Rulemaking filed by Mid-West on August 19, 2004.

would leave nearly 2,400 people with only one full time aural service.⁷ This significant loss of service renders Magnum's Petition flawed and inconsistent with the Commission's allotment priorities. Moreover, Magnum conveniently failed to bring to the Bureau's attention that Stoughton is part of the Madison Urbanized Area and did not provide the required *Tuck* analysis demonstrating that the proposal is in the public interest. Simply put, Magnum's proposal is nothing more than an effort to remove a local service from Portage, a rural area, to Stoughton, which is located in the well-served Madison Urbanized Area. As Mid-West's comments show, Commission policy and the public interest require that the Bureau preserve the existing allocation of Channel 240A at Portage under these circumstances. Accordingly, Mid-West respectfully reiterates its request that the Bureau reject Magnum's proposal to relocate FM Channel 240A from Portage to Stoughton, Wisconsin.

Respectfully submitted,

MID-WEST MANAGEMENT, INC.

By: _____

David D. Oxenford
Brendan Holland

Its Attorneys

Shaw Pittman LLP
2300 N Street, NW
Washington, DC 20037
(202) 663-8000

Dated: September 3, 2004

⁷

In addition, as noted in the engineering exhibit filed with Mid-West's comments, a large number of persons presently receiving service from WBKY would be left with less than five full-time aural services as a result of the proposed reallocation.

CERTIFICATE OF SERVICE

I, Rhea Lytle, a secretary with the law firm of Shaw Pittman LLP, do hereby certify that a copy of the foregoing “**REPLY COMMENTS AND OPPOSITION TO REQUEST FOR WAIVER**” was mailed, first class, postage prepaid this 3rd day of September 2004 to the following:

John A. Karousos*
Assistant Chief, Audio Division
Media Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-A266
Washington, D.C. 20554

Denise B. Moline, Esq.
PMB #215
1212 S. Naper Blvd. #119
Naperville, Illinois 60540



Rhea Lytle

*Via Hand Delivery